

ORIGINAL

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CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

Attorneys for Plaintiffs TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, FIDELITY AND GUARANTY INSURANCE COMPANY; and ST. PAUL MERCURY INSURANCE COMPANY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, a Connecticut corporation; FIDELITY AND GUARANTY INSURANCE COMPANY, an Iowa corporation; ST. PAUL MERCURY INSURANCE COMPANY, a Minnesota corporation

Plaintiffs,

vs.

EVEREST INDEMNITY INSURANCE COMPANY, a Delaware; STEADFAST INSURANCE COMPANY, a Delaware corporation; PROBUILDERS SPECIALTY INSURANCE COMPANY, a District of Columbia corporation; AMERICAN SAFETY INDEMNITY COMPANY, an Oklahoma corporation; AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY, an Alaska corporation; CRV EL CENTRO PARTNERS, L.P., a California limited partnership; INNOVATIVE COMMUNITIES, INC., a California

Case No. **10 CV 1649 BTM POR**

**TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA'S, FIDELITY AND GUARANTY INSURANCE COMPANY'S AND ST. PAUL MERCURY INSURANCE COMPANY'S COMPLAINT FOR:**

- (1) EQUITABLE CONTRIBUTION;**
- (2) DECLARATORY RELIEF;**
- (3) REIMBURSEMENT; AND**
- (4) BREACH OF CONTRACT**

CP

1 corporation; and DOES 1 through 10  
2 inclusive,

3 Defendants.

4 Comes now Plaintiffs, TRAVELERS PROPERTY CASUALTY COMPANY  
5 OF AMERICA, FIDELITY AND GUARANTY INSURANCE COMPANY, and ST.  
6 PAUL MERCURY INSURANCE COMPANY (collectively referred to as  
7 "Plaintiffs") and plead the following allegations on information and belief in support  
8 of its Complaint herein:

9 1. The present action seeks equitable contribution and a judicial declaration  
10 concerning the rights and obligations as amongst insurance carriers which issued  
11 liability insurance policies purportedly covering two defendants sued in an action  
12 currently pending in the Superior Court of the State of California, in and for the  
13 County of Imperial, styled *Fausto, et al. v. CRV El Centro Partners, L.P. et al.*, case  
14 number ECU04913 (the "Underlying Action").

15 **JURISDICTION**

16 2. Plaintiff TRAVELERS PROPERTY CASUALTY COMPANY OF  
17 AMERICA ("Travelers") is now, and at all relevant times was, a corporation, existing  
18 under the laws of the State of Connecticut, with its principal place of business in  
19 Hartford, Connecticut. Travelers is, and at all relevant times was, an insurance carrier  
20 eligible to do business as an insurer in the State of California.

21 3. Plaintiff FIDELITY AND GUARANTY INSURANCE COMPANY  
22 ("FGIC") is now, and at all relevant times was, a corporation, existing under the laws  
23 of the State of Iowa with its principal place of business in St. Paul, Minnesota. FGIC  
24 is, and at all relevant times was, an insurance carrier eligible to do business as an  
25 insurer in the State of California.

26 4. Plaintiff ST. PAUL MERCURY INSURANCE COMPANY ("St. Paul")  
27

1 is now, and at all relevant times was, a corporation, existing under the laws of the  
2 State of Minnesota with its principal place of business in St. Paul, Minnesota. St.  
3 Paul is, and at all relevant times was, an insurance carrier eligible to do business as an  
4 insurer in the State of California.

5 5. Plaintiffs are informed and believe and thereon allege that Defendant  
6 EVEREST INDEMNITY INSURANCE COMPANY ("Everest") is a corporation  
7 organized and existing under the laws of the State of Delaware with its principal place  
8 of business in Liberty Corner, New Jersey. Plaintiffs are further informed and believe  
9 and thereon allege that Everest is, and at all times relevant was, an insurance carrier  
10 eligible to do business as an insurer in the State of California.

11 6. Plaintiffs are informed and believe and thereon allege that Defendant  
12 STEADFAST INSURANCE COMPANY ("Steadfast") is a corporation organized  
13 and existing under the laws of the State of Delaware with its principal place of  
14 business in Dover, Delaware. Plaintiffs are further informed and believe and thereon  
15 allege that Steadfast is, and at all times relevant was, an insurance carrier eligible to  
16 do business as an insurer in the State of California.

17 7. Plaintiffs are informed and believe and thereon allege that Defendant  
18 PROBUILDERS SPECIALTY INSURANCE COMPANY ("Probuilders"), is a  
19 corporation organized and existing under the laws of the District of Columbia with its  
20 principal place of business in The District of Columbia. Plaintiffs are further  
21 informed and believe and thereon allege that Probuilders is, and at all times relevant  
22 was, an insurance carrier eligible to do business as an insurer in the State of  
23 California.

24 8. Plaintiffs are informed and believe and thereon allege that Defendant  
25 AMERICAN SAFETY INDEMNITY COMPANY ("American Safety"), is a  
26 corporation organized and existing under the laws of the State of Oklahoma with its  
27 principal place of business in Atlanta, Georgia. Plaintiffs are further informed and

1 believe and thereon allege that American Safety is, and at all times relevant was, an  
2 insurance carrier eligible to do business as an insurer in the State of California.

3 9. Plaintiffs are informed and believe and thereon allege that Defendant  
4 AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY  
5 ("AISLIC"), is a corporation organized and existing under the laws of the State of  
6 Alaska with its principal place of business in New York, New York. Plaintiffs are  
7 further informed and believe and thereon allege that AISLIC is, and at all times  
8 relevant was, an insurance carrier eligible to do business as an insurer in the State of  
9 California.

10 10. Plaintiffs are informed and believe and thereon allege that Defendant  
11 CRV EL CENTRO PARTNERS, L.P. ("CRV El Centro"), is, a limited partnership,  
12 existing under the laws of the State of California with its principal place of business  
13 in California. Plaintiffs are further informed and believe and thereon allege that  
14 CRV El Centro is, and at all times relevant was eligible to do business and is doing  
15 business in the State of California.

16 11. Plaintiffs are informed and believe and thereon allege that Defendant  
17 INNOVATIVE COMMUNITIES, INC. ("Innovative"), is, a corporation, existing  
18 under the laws of the State of California with its principal place of business in  
19 California. Plaintiffs are further informed and believe and thereon allege that  
20 Innovative is, and at all times relevant was eligible to do business and is doing  
21 business in the State of California.

22 12. Defendants sued herein as DOES 1 through 10, inclusive, are sued herein  
23 by such fictitious names because Plaintiffs are unaware of the true names and  
24 capacities of said DOE defendants. Plaintiffs will amend this Complaint to reflect the  
25 true names when the same are ascertained. Plaintiffs are informed and believe and  
26 thereon allege that said DOE defendants are responsible for the acts, events, and  
27 circumstances alleged herein, or are interested parties to this action.

## VENUE

## GENERAL ALLEGATIONS

16. Plaintiff Travelers issued the commercial general liability insurance policy numbered I-680-2897C731-TIL (effective 4/12/06 – 4/12/07), under which West Coast Countertops was the named insured.

17. Plaintiff FGIC issued the commercial general liability insurance policies numbered BK01714446 (effective 4/12/04 – 4/12/05), and BK02126663 (effective 4/12/05 – 4/12/06) under which West Coast Countertops was the named insured.

18. Plaintiff St. Paul issued the commercial general liability policy numbered CK08100356 (effective 6/30/07 – 6/30/08) under which Executive Landscape, Inc. was the named insured.

19. Plaintiffs are informed and believe and thereon allege that Defendant Everest issued commercial general liability policy(ies) of insurance under which Defendants CRV El Centro and/or Innovative were named insureds.

1           20. Plaintiffs are informed and believe and thereon allege that Defendant  
2 Steadfast issued commercial general liability policies of insurance, effective 2/1/04 –  
3 3/1/08 under which Home Depot USA, Inc. dba Creative Interiors was a named  
4 insured. Plaintiffs are further informed and believe and thereon allege that  
5 Defendants CRV El Centro and Innovative were named as additional insureds on  
6 these policies.

7           21. Plaintiffs are informed and believe and thereon allege that Defendant  
8 Probuilders issued a commercial general liability policy of insurance, effective 7/8/04  
9 – 7/8/05 under which Falcon Framing Company, Inc. was a named insured. Plaintiffs  
10 are further informed and believe and thereon allege that Defendants CRV El Centro  
11 and Innovative were named as additional insureds on this policy.

12           22. Plaintiffs are informed and believe and thereon allege that Defendant  
13 Probuilders issued a commercial general liability policy of insurance, effective  
14 6/25/04 – 6/25/05 under which Lara Air Conditioning was a named insured.  
15 Plaintiffs are further informed and believe and thereon allege that Defendants CRV El  
16 Centro and Innovative were named as additional insureds on this policy.

17           23. Plaintiffs are informed and believe and thereon allege that Defendant  
18 American Safety issued commercial general liability policies of insurance, effective  
19 12/15/03 – 12/15/05 under which Guy Evans, Inc. dba A-1 cabinets was a named  
20 insured. Plaintiffs are further informed and believe and thereon allege that  
21 Defendants CRV El Centro and Innovative were named as additional insureds on  
22 these policies.

23           24. Plaintiffs are informed and believe and thereon allege that Defendant  
24 American Safety issued a commercial general liability policy of insurance, effective  
25 2/10/05 – 2/10/06 under which Valencia Brothers, Inc. was a named insured.  
26 Plaintiffs are further informed and believe and thereon allege that Defendants CRV El  
27 Centro and Innovative were named as additional insureds on this policy.



1           25. Plaintiffs are informed and believe and thereon allege that Defendant  
2 AISLIC issued a commercial general liability policy of insurance, effective 10/1/05 –  
3 6/30/07 under which Western Shower Door, Inc. was a named insured. Plaintiffs are  
4 further informed and believe and thereon allege that Defendants CRV El Centro and  
5 Innovative were named as additional insureds on this policy.

6           26. Plaintiffs are informed and believe and thereon allege that each of the  
7 policies issued by the Defendants identified herein fictitiously as DOES 1 to 10 name  
8 or designate CRV El Centro and/or Innovative as an insured thereon, whether as  
9 named insured or additional insured.

10           27. Defendants are each in possession of their respective policies of  
11 insurance and know the terms and contents thereof, to an equal or greater extent than  
12 Plaintiffs. However, on information and belief, Plaintiffs alleges that each of the  
13 defendants' policies provide an insuring agreement and that each of the Defendants'  
14 policies are written on standard forms which provide, in part, an agreement to defend  
15 any insured from and against suits seeking damages covered under the insurance  
16 policy.

17           28. Plaintiffs are informed and believe that by reason of the Defendants'  
18 declarations and/or additional insured endorsements, CRV El Centro and Innovative  
19 are insureds on Defendants' policies for purposes of the insuring agreement(s) therein.

20 **B. The Underlying Action**

21           29. On or about December 15, 2008, 51 homeowners residing in the "Buena  
22 Vista" community located in El Centro, California filed a construction defect  
23 litigation against Defendants CRV El Centro and Innovative entitled *Fausto, et al. v.*  
24 *CRV El Centro Partners, L.P. et al.*, case number ECU04913 (the "Underlying  
25 Action").

26           30. Plaintiffs are informed and believe that Defendants CRV El Centro and  
27 Innovative tendered the defense of the Underlying Action to their direct carrier,

1 Defendant Everest. Plaintiffs are further informed and believe that Defendant Everest  
2 denied the tender.

3 31. Plaintiffs are informed and believe that Defendants CRV El Centro and  
4 Innovative tendered the defense of the Underlying Action to no less than 15 of the  
5 insurance carriers for various of the subcontractors who performed work on the  
6 project (collectively referred to as "AI carriers"), including to Plaintiffs and  
7 Defendants Steadfast, Probuilders, American Safety and AISLIC, contending that  
8 Defendants CRV El Centro and Innovative are entitled a defense as an additional  
9 insured under the AI carriers' policies.

10 32. Plaintiffs are informed and believe and thereon allege that Defendants  
11 Steadfast, Probuilders, American Safety and AISLIC all denied the additional insured  
12 tenders of Defendants CRV El Centro and Innovative and refused to participate in  
13 their defense with respect to the Underlying Action.

14 33. Plaintiffs are informed and believe that the parties sued herein as 'Does 1  
15 - 10" have, to date, failed or refused to defend Defendants CRV El Centro and  
16 Innovative in the Underlying Action.

17 34. Plaintiffs each accepted the tender of defense by Defendants CRV El  
18 Centro and Innovative, agreeing to defend Defendants CRV El Centro and Innovative  
19 in the Underlying Action under their respective policies, subject to a full reservation  
20 of rights. In addition to other limitations within Plaintiffs' respective policies, any  
21 defense and indemnity obligations that may be owed to Defendants CRV El Centro  
22 and Innovative are limited to the extent that Defendants CRV EL Centro and  
23 Innovative are held liable for the negligence of Plaintiffs' respective named insureds.

24 35. Plaintiffs have paid their equitable share of Defendants CRV El Centro  
25 and Innovative's defense costs in the Underlying Action and have incurred substantial  
26 costs in connection with CRV El Centro's and Innovative's defense.  
27



1        36. Defendants Everest, Steadfast, Probuilders, American Safety, and  
2 AISLIC each owe a continuing duty to defend and indemnify Defendants CRV El  
3 Centro and Innovative in the Underlying Action.

4        37. Because the Defendants have failed and refused to participate in the  
5 defense of CRV El Centro and Innovative, in breach of their obligations under their  
6 respective policies of insurance, Plaintiffs have paid, are paying, and will pay more  
7 costs than they would pay if Defendants participated in the defense of CRV El Centro  
8 and Innovative. Plaintiffs are therefore paying an excessive and inequitable share of  
9 the costs of defending CRV El Centro and Innovative in the Underlying Action.

10       38. Plaintiffs respective named insureds, West Coast Countertops and  
11 Executive Landscape, Inc., each recently agreed to settle their portions of the claims  
12 in the Underlying Action for \$1,000 each. Based upon the settlement amounts of  
13 Plaintiffs' named insureds, Plaintiffs further contend that they have paid in excess of  
14 their equitable share for the defense of Defendants CRV El Centro and Innovative.

15       39. Plaintiffs have paid a total of \$186,606.11 for the defense of Defendants  
16 CRV El Centro and Innovative. As of the filing of this complaint, Defendants CRV  
17 El Centro and Innovative have currently demanded that Plaintiffs pay an additional  
18 approximately \$191,000 in defense costs. Further, while Plaintiffs' named insureds,  
19 West Coast Countertops and Executive Landscape, Inc. have each agreed to settle  
20 their portions of the Underlying Action for \$1,000 each, Defendants CRV El Centro  
21 and Innovative will not allow the settlement to be finalized and the releases to be  
22 signed until Plaintiffs pay the \$191,000 without objection.

23 //

24 //

25 //

26 //

27 //

**FIRST CAUSE OF ACTION FOR EQUITABLE CONTRIBUTION**

**(Against Defendants Everest, Steadfast, Probuilders, American Safety, AISLIC, and DOES 1 through 10)**

40. Plaintiffs hereby re-allege and incorporate by reference each allegation contained in all preceding paragraphs of this Complaint as though fully set forth herein.

41. In the Underlying Action, the homeowner plaintiffs seek monetary damages from CRV El Centro and Innovative for, among other things, defective construction for which CRV El Centro and Innovative are or were allegedly responsible.

42. Plaintiffs are defending Defendants CRV El Centro and Innovative against the claims asserted against Defendants CRV El Centro and Innovative in the Underlying Action, pursuant to the terms and conditions of its liability insurance policies, and subject to a full reservation of its rights.

43. Plaintiffs are informed and believe and thereon allege that policies issued by Defendants Everest, Steadfast, Probuilders, American Safety, and AISLIC provide liability insurance to Defendants CRV El Centro and Innovative, designating Defendants CRV El Centro and Innovative as named insureds or additional insureds thereon. Plaintiffs are further informed and believe and thereon allege that the allegations made, pleaded or otherwise asserted against Defendants CRV El Centro and Innovative in the Underlying Action, if true, set forth claims for damages potentially covered under Defendants' policies.

44. As such, Defendants Everest, Steadfast, Probuilders, American Safety, and AISLIC, and each of them, are obligated to participate in the defense of Defendants CRV El Centro and Innovative in the Underlying Action by reason of their respectively underwritten policies of insurance, which provide an agreement to

1 undertake the duty to defend suits seeking damages from bodily injury or property  
2 damage covered under their respective policies.

3 45. All conditions precedent to Defendants Everest, Steadfast, Probuilders,  
4 American Safety, and AISLIC's obligations under their respective policies of  
5 insurance have been satisfied, waived, and/or excused. Defendants Everest, Steadfast,  
6 Probuilders, American Safety, and AISLIC's obligations to defend Defendants CRV  
7 El Centro and Innovative are currently due and owing.

8 46. Defendants Everest, Steadfast, Probuilders, American Safety, and  
9 AISLIC have to date failed to participate in the defense of Defendants CRV El Centro  
10 and Innovative, and failed to contribute a full and equitable share toward Plaintiffs'  
11 costs of defending Defendants CRV El Centro and Innovative which have been  
12 incurred and which are being incurred in connection with the Underlying Action.

13 47. By reason of these defendants' failure to discharge their obligations and  
14 participate in the defense of Defendants CRV El Centro and Innovative, Plaintiffs  
15 have incurred and/or paid, and will incur and/or pay, more costs than they would  
16 have, had Defendants Everest, Steadfast, Probuilders, American Safety, and AISLIC  
17 agreed to defend Defendants CRV El Centro and Innovative in performance of their  
18 due and owing obligations under their respective insurance policies.

19 48. Defendants Everest, Steadfast, Probuilders, American Safety, and  
20 AISLIC's failure to discharge their obligations under their respective policies of  
21 insurance is wrongful and thus causing an inequitable result, in that Plaintiffs are  
22 paying and have paid more than their equitable share of the costs of defending  
23 Defendants CRV El Centro and Innovative in the Underlying Action without the  
24 participation of Defendants in paying for such costs.

25 49. Because of Defendants Everest, Steadfast, Probuilders, American Safety,  
26 and AISLIC's wrongful failure to discharge their obligations under their respective  
27 policies of insurance, Plaintiffs are entitled to an award of equitable contribution, to

1 reimburse them for costs equivalent to each Defendants Everest, Steadfast,  
 2 Probuilders, American Safety, and AISLIC's fair and equitable proportionate share of  
 3 the total costs of defense incurred in connection with the claim against Defendants  
 4 CRV El Centro and Innovative, with interest thereon at the prescribed legal rate.

5 **SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF**

6 **Count One (Against Defendants Everest, Steadfast, Probuilders, American**  
 7 **Safety, and AISLIC, and DOES 1 through 10)**

8 50. Plaintiffs hereby re-allege and incorporate by reference each allegation  
 9 contained in all preceding paragraphs of this Complaint as though fully set forth  
 10 herein.

11 51. An actual, present and justiciable controversy has arisen and now exists  
 12 between Plaintiffs on the one hand and Defendants Everest, Steadfast, Probuilders,  
 13 American Safety, and AISLIC on the other, concerning their respective rights, duties  
 14 and obligations under the insurance policies issued by each of them.

15 52. In particular, Plaintiffs contends, and Defendants Everest, Steadfast,  
 16 Probuilders, American Safety, and AISLIC deny the following:

- 17 a. Defendants Everest, Steadfast, Probuilders, American Safety, and  
 18 AISLIC had and have a duty to defend Defendants CRV El Centro and  
 19 Innovative against the claims, demands, actions and causes of action  
 20 asserted against Defendants CRV El Centro and Innovative in the  
 21 Underlying Action;
- 22 b. Defendants Everest, Steadfast, Probuilders, American Safety, and  
 23 AISLIC had and have an equitable duty and responsibility to pay a fair  
 24 and proportionate share of the costs of defense incurred on behalf of  
 25 Defendants CRV El Centro and Innovative;
- 26 c. The costs of defending Defendants CRV El Centro and Innovative have  
 27 been and are being borne disproportionately by Plaintiffs; and

1 d. The costs associated with the defense of Defendants CRV El Centro and  
2 Innovative should be equitably apportioned between and among  
3 Plaintiffs and Defendants Everest, Steadfast, Probuilders, American  
4 Safety, and AISLIC under applicable law and equitable principles.

5 53. Plaintiffs assert and contend that declaratory judgment is both necessary  
6 and proper at this time for the court to determine the respective rights and liabilities of  
7 the parties regarding their obligations to pay for the defense of Defendants CRV El  
8 Centro and Innovative against the allegations made in the Underlying Action.

9 **Count Two (Against Defendants Everest, CRV El Centro and Innovative and**  
10 **DOES 1 through 10)**

11 54. Plaintiffs hereby re-allege and incorporate by reference each allegation  
12 contained in all preceding paragraphs of this Complaint as though fully set forth  
13 herein.

14 55. An actual, present, and justiciable controversy has arisen and now exists  
15 between Plaintiffs on the one hand, and the Defendants Everest, CRV EL Centro and  
16 Innovative on the other, concerning Plaintiffs' rights, duties, and obligations under the  
17 respective policies of insurance issued by Plaintiffs.

18 56. Plaintiffs contends that pursuant to their respective policies issued to  
19 West Coast Countertops and Executive Landscape, Inc., notwithstanding any other  
20 limitations and exclusions contained within the policies, Plaintiffs have a duty to  
21 defend Defendants CRV EL Centro and Innovative in the Underlying Action as  
22 additional insureds only to the extent the Defendants CRV EL Centro and Innovative  
23 are held liable for the negligence of Plaintiffs' respective named insureds. Plaintiffs  
24 further contend that in paying the \$186,606.11, Plaintiffs have already paid more than  
25 they were obligated to pay and that Plaintiffs do not owe Defendants CRV El Centro  
26 and Innovative any additional amounts.

1        57. Plaintiffs are informed and believe and based thereon allege that  
2 Defendants Everest, CRV EL Centro and Innovative dispute these contentions and  
3 contend that as additional insureds under Plaintiffs' respective policies issued to West  
4 Coast Countertops and Executive Landscape, Inc., primary responsibility for their  
5 entire defense in the underlying action shifted from its direct insurer Everest, to  
6 Plaintiffs despite the fact that only \$2,000 of potential liability are attributed to  
7 Plaintiffs' named insureds. Plaintiffs are further informed and believe that  
8 Defendants CRV El Centro and Innovative currently contend that Plaintiffs owe  
9 \$191,000 for their defense, in addition to the \$186,606.11 that Plaintiffs have already  
10 paid.

11        58. By reason of the foregoing, a declaratory judgment is both proper and  
12 necessary, so that the respective rights, duties, and obligations as between Plaintiffs  
13 and Defendants Everest, CRV EL Centro and Innovative may be determined under  
14 the provisions of the applicable policies of insurance.

15                    **THIRD CAUSE OF ACTION FOR REIMBURSEMENT**

16                    **(Against Defendants CRV El Centro and Innovative)**

17        59. Plaintiffs hereby re-allege and incorporate by reference each allegation  
18 contained in all preceding paragraphs of this Complaint as though fully set forth  
19 herein.

20        60. Plaintiffs each accepted the tender of defense by Defendants CRV El  
21 Centro and Innovative, agreeing to defend Defendants CRV El Centro and Innovative  
22 in the Underlying Action under their respective policies, subject to a full reservation  
23 of rights. When Plaintiffs agreed to participate in the defense of Defendants CRV El  
24 Centro and Innovative, they specifically reserved their respective rights to seek  
25 reimbursement from Defendants CRV El Centro and Innovative of any defense  
26 related payments that Plaintiffs may make that are not potentially covered under the  
27 applicable policies.



1           61. In addition to other limitations within Plaintiffs' respective policies, any  
2 defense and indemnity obligations that may be owed to Defendants CRV El Centro  
3 and Innovative are limited to the extent that Defendants CRV EL Centro and  
4 Innovative are held liable for the negligence of Plaintiffs' respective named insureds.

5           62. Plaintiffs' named insureds have each agreed to settle their respective  
6 portions of the claims for \$1,000 each. In paying \$186,606.11, Plaintiffs have paid  
7 more than the portion of the defense costs that can be attributed to the liability of  
8 Plaintiffs' named insureds and have therefore made defense related payment outside  
9 of the scope of coverage under Plaintiffs' policies.

10           63. Plaintiffs are entitled to reimbursement of any defense related payments  
11 that were made that are not potentially covered under the applicable policies.  
12 Plaintiffs are entitled to reimbursement of some or all of the \$186,606.11 that  
13 Plaintiffs have already paid to the extent that such defense costs do not arise out of  
14 covered damages caused by West Coast Countertop's or Executive Landscape, Inc.'s  
15 work.

16           **FOURTH CAUSE OF ACTION FOR BREACH OF CONTRACT**

17           **(Against Defendants CRV El Centro and Innovative)**

18           64. Plaintiffs hereby re-allege and incorporate by reference each allegation  
19 contained in all preceding paragraphs of this Complaint as though fully set forth  
20 herein.

21           65. Under the terms of Plaintiffs' policies with West Coast Countertops and  
22 Executive Landscape, Inc., the insured and additional insureds are mandated to  
23 cooperate with Plaintiffs with regard to all aspects of coverage, including any  
24 defense afforded under the policies.

25           66. Plaintiffs have performed all conditions, covenants, and promises  
26 required on their part to be performed in accordance with the terms and conditions of  
27 the referenced insurance policies.

67. Defendants CRV El Centro and Innovative have breached the referenced insurance policies by breaching their duty to cooperate pursuant to the terms of the policies. Specifically, Defendants CRV El Centro and Innovative have breached the insurance policies and their duty to cooperate by deliberating preventing the settlement agreements of West Coast Countertop and Executive Landscape, Inc. from being finalized in an effort to extract additional money to which they are not entitled from Plaintiffs.

68. As a result of Defendants CRV El Centro's and Innovative's breach of the insurance policies and breach of the duty to cooperate have been damaged in a sum to be determined according to proof at trial.

## PRAYER FOR RELIEF

**WHEREFORE** Plaintiffs pray for judgment, as follows:

1. Under the First Cause of Action, an order of monetary damages to Plaintiffs from Defendants, and each of them, to reimburse Plaintiffs for some or all of the defense costs incurred to date, in an amount that is determined to be fair and equitable, with interest thereon at the proscribed legal rate; and
2. Under the Second Cause of Action, a judicial declaration that:
  - a. Defendants, and each of them, have and had a duty and obligation to defend Defendants CRV El Centro and Innovative in connection with the Underlying Action; and
  - b. The costs associated with the defense of Defendants CRV El Centro and Innovative should be equitably apportioned between Plaintiffs and these Defendants; and
  - c. Plaintiffs have paid more than they were obligated to pay under their respective policies and do not owe Defendants CRV El Centro and Innovative any additional amounts.

3. Under the Third Cause of Action, an order of monetary damages to Plaintiffs from Defendants CRV El Centro and Innovative, to reimburse Plaintiffs for some or all of the defense costs paid to date, in an amount that is determined to be fair and equitable, with interest thereon at the proscribed legal rate; and
4. Under the Fourth Cause of Action, an order of monetary damages to Plaintiffs from Defendants CRV El Centro and Innovative, to compensate Plaintiffs for Defendants breach of the insurance policies and the duty to cooperate, with interest thereon at the proscribed legal rate; and
5. For attorneys' fees and costs;
6. For prejudgment interest;
7. For costs of suit herein; and
8. For such other and further relief as this Court deems just and proper.

Dated: August 6, 2010

**BOHM, MATSEN, KEGEL & AGUILERA, LLP**



A. Eric Aguilera, Esq.

Jason Chao, Esq.

Attorneys for Plaintiff TRAVELERS  
PROPERTY CASUALTY COMPANY OF  
AMERICA; FIDELITY AND GUARANTY  
INSURANCE COMPANY and ST. PAUL  
MERCURY INSURANCE COMPANY

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Travelers Property Casualty Company of America, A Connecticut corporation

(b) County of Residence of First Listed Plaintiff Hartford, CT  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bohm, Matsen, Kegel & Aguilera, LLP  
714-384-6500

## DEFENDANTS

Everest Indemnity Insurance Company, a Delaware

County of Residence of First Listed Defendant Somerset County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10 CV 1649 BTM

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## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332

Brief description of cause:

Declaration and determination that Plaintiff has neither a duty to defend nor a duty to indemnify and

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/06/2010

SIGNATURE OF ATTORNEY OF RECORD

*H. E. G. Bohm*

FOR OFFICE USE ONLY

RECEIPT #

16680

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

CP

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS016680  
Cashier ID: bhartman  
Transaction Date: 08/06/2010  
Payer Name: BOHM MATSEN KEGEL

CIVIL FILING FEE  
For: TRAVELERS CO. V EVEREST INDEM  
Case/Party: D-CAS-3-10-CV-001649-001  
Amount: \$350.00

CHECK  
Check/Money Order Num: 22124  
Amt Tendered: \$350.00

Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.